IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
SECOND APPEAL NO.522 OF 2005

Shri Dattu Dagadu Shinde .. ..Appellant
Versus
Shri Sitaram Bhaguji Gopale & ors. ..Respondents

Smt. Lalita Panchakshari for appellant

CORAM : P.V.KAKADE, J.

DATE : 1ST SEPTEMBER, 2005.

P.C.:

1. The appellant has preferred this appeal against the judgment and order passed by Addl. District Judge, Pune dated 29.4.2004 dismissing both the Civil Appeals i.e. Regular Civil Appeal No.661 of 1997 and 662 of 1997 arising out of common judgment passed by Joint Civil Judge, Junior Division, Khed, who disposed of Reg. Civil Suit No.255 of 1991 and Reg.Civil Suit No.194 of 1992. R.C.S.No.255 of 1991 was decreed whereas R.C.S No.194 of 1992 for specific performance filed by the present appellant came to be dismissed.

2. I have heard the learned counsel for the appellant. Perused the record.

3. The present appellant filed the suit for specific performance of the oral agreement between the parties and had come with the case at the foot of the said oral agreement that amount of Rs.5500/= was paid out of agreed consideration of Rs.8000/= and also alleged that the suit property was handed over to him on the basis of oral agreement and hence the suit for specific performance came to be filed. The defendants filed the suit against the present appellant being R.C.S.No.255 of 1991 for removal of encroachment made by the present appellant over the suit property. The defendants in both the suits contested the rival claims.

. The learned trial judge adjudicated the dispute on merits and came to the conclusion that the present respondent had proved in his suit that the defendant had constructed new house on the suit property i.e. open space being new No.98 by committing encroachment and as such decree was passed in favour of the present respondent for declaration and consequential reliefs. On the other hand the suit of the present appellant came to be dismissed on the ground that he has failed to prove his alleged oral agreement and consequent handing

over possession of the suit property. It was further held that it was not proved that he had shown readiness and willingness to perform his part of the contract and as such the suit of the present appellant came to be dismissed. The appeal was carried to the District Court. The learned Addl. District Judge after hearing both the parties and on the basis of available evidence dismissed both the appeals. Hence the present appeal.

4. At the outset, it must be noted that there is absolutely no substantial question of law involved in this appeal. The learned counsel for the appellant urged that the question of law involved in the present appeal was to the effect that both the courts below did not appreciated the evidence of the present appellant, which was led in order to establish the factum of oral agreement and consequent handing over possession of the suit property to him. However, perusal of the entire evidence shows that both the courts below have indeed scrutinised and appreciated the evidence of the present appellant and have come to the conclusion that there was absolutely no evidence on record to support the theory of oral agreement and consequent handing over possession of the suit property. The learned counsel for the

appellant wanted to put reliance on affidavit filed by the concerned parties in order to show that it was admitted that both the parties were owners of the property. However, this aspect cannot be taken into account in the light of the oral evidence of the present appellant himself on oath before the court, which is conspicuous by silence regarding the alleged factum of oral agreement and consequent legal possession.

5. Be as it may, the fact remains that both the courts below have concurrently held that the present appellant has failed to prove his case and are seen to have appreciated the entire evidence on record in proper perspective and therefore, I do not seen any reason to interfere with the said reasoning adopted by both the courts. In the result the appeal stands dismissed. Consequently Civil Application No.962 of 2005 also stands dismissed.